IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 886 OF 2006(O.S.)

Madhuri Yogindra Mafatlal .. Plaintiff

V/s.

Atulya Yogindra Mafatlal
and Anr. .. Defendants

Mr. R.D. Soni with Mrs. Uma Sharma i/b. Dharam & Co. for the Plaintiff
Mr. C.S. Balsara with Ms. Rupali Dixit Ms. Vedpathak i/b. Maneksha & Sethana for the Defendant No.1

CORAM : S.R. SATHE,J.
DATED : 20/04/2007

P.C. :-

1. Heard Shri Soni learned Advocate for the Plaintiff as well as Shri Balsara learned Advocate for the Defendant No.1.

2. Learned Advocate for the Plaintiff submitted that his client i.e. Plaintiff has instructed him to withdraw the present suit as the suit Jewellery is already distributed as per the order passed by this Court on 29/02/2007 and thus, purpose of the suit is served. On so saying, the learned Advocate has submitted the letter written by his client to him which is marked as 'X' for identification. The learned

Advocate, therefore, submitted that the originating summons be disposed of as withdrawn.

3. Shri Balsara learned Advocate for the defendant No.1 submitted that Plaintiff should not be allowed to withdraw the originating summons because the other corpus of the Trust namely shares have not been distributed. The learned Advocate for the Plaintiff submitted that the defendant No.1 can not oppose the withdrawal of the originating summons. The defendant can not claim any relief in the originating summons taken out by the Plaintiff. If the defendant has any grievance or if he intends to claim share or distribution of the shares alleged to have been held by the Trust then he may seek his own remedy by filing separate proceedings. But he can not oppose withdrawal when the Plaintiff is asking for unconditional withdrawal.

4. It is needless to say that even as per the provisions of order-23 Rule-1 of CPC at any time after institution of the suit, the Plaintiff may abandon his suit in part or in toto. Thus, Plaintiff is certainly entitled to withdraw the suit unconditionally. Shri Balsara learned Advocate for the defendant No.1 tried

to argue before me that when the corpus of the Trust is not consisting only of Jewellery but also shares then so long as shares are not distributed the originating summons can not be disposed of or allowed to be withdrawn.

5. By this originating summons the Plaintiff has submitted following questions for determination of this Court.

> *a) Whether the defendant No.1 is one of the trustees of Atulya Family Trust No.6 and/or Atulya Family Trust No.7 in absence of any documentary evidence and/or order from competent court of law/authority ?*
>
> *b) Whether the distribution of corpus viz. Jewellery, of family Atulya Family Trust No.6 and/or Atulya Family Trust No.7 held by the plaintiff in trust for and on behalf of said Atulya Family Trust No.6 and/or Atulya Family Trust No.7 could be distributed to/among the beneficiaries which includes adult as*

well as minor members of family of settler without intervention of this Hon'ble Court more so in view of strained relations between the plaintiff and defendant No.1 ?

c) Whether the Plaintiff would stand discharged of all her obligations as one of the trustees of the said Atulya Family Trust No.6 and/or Atulya Family Trust No.7 by depositing the corpus of the Atulya Family Trust No.6 and/or Atulya Family Trust No.7 viz. Jewellery described in exhibit-"B/1" to "b/3" annexed to the plaint held by her in trust for and on behalf of Atulya Family Trust No.6 and/or Atulya Family Trust No.7?

d) Whether the defendant No.1 is entitled to entire corpus of Atulya Family Trust No.6 and/or Atulya Family Trust No.7 for and on behalf of the beneficiaries of said Atulya Family Trust No.6 and/or Atulya Family Trust

No.7 as claimed by him through letter dated 17th January, 2006 of his Solicitors, Maneksha and Sethna ?

6. From clause 'B' mentioned above it does appear that Plaintiff has treated only Jewellery as the corpus of the trust. Of course, in clause-D he has again made reference to 'entire corpus' so it may be that the trust may be having some other property/corpus other than Jewellery. But Plaintiff wants to restrict this originating summons only in respect of Jewellery. Plaintiffs averments in paragraph-8 also suggest that there may be other properties of the Trust because word used by the Plaintiff are corpus of the Trust including the suit Jewellery'. The defendant No.1 has also filed affidavit stating therein that particular shares are also owned by the Trust. According to him, the initial number of Trust may be less but all accretions of the said shares would also from part of Trust Property and naturally, liable for distribution. However, if Plaintiff is not desirous to have any finding of this Court on the issue or question mentioned at clause-'c' and 'd' above and wants to withdraw the originating summons unconditionally, she can do so. So far as question mentioned at clause-'a' is concerned the

Plaintiff has already given up the said issue as submitted by the learned Advocate for the Plaintiff as well as as mentioned in her letter written to her advocate dated 16/04/2007. As Plaintiff wants to withdraw the originating summons unconditionally there is no need for this Court to pass any order in respect of issue raised in para-'c' and 'd'. Hence, I pass following order :-

O R D E R

The Originating summons is dismissed as withdrawn.

The Plaintiff to pay costs of originating summons to Defendant No.1 as per Rule-256 of the Bombay High Court (Original Side Rules).

(S.R. SATHE,J.)